

# **Exhibit 4**



PHONE: (740) 338-3100  
FAX: (740) 338-3405  
[www.murrayenergycorp.com](http://www.murrayenergycorp.com)

June 16, 2017

VIA E-MAIL AND OVERNIGHT

Mr. Samuel M. Bayard, Esq.  
Davis Wright Tremaine LLP  
1251 Avenue of the Americas  
21<sup>st</sup> Floor  
New York, New York 10020-1104  
[samuelbayard@dwt.com](mailto:samuelbayard@dwt.com)

**RE: Second Cease and Desist Making False and Defamatory Statements  
Against Robert E. Murray and Murray Energy Corporation**

Dear Mr. Bayard:

This letter responds to your letter dated June 15, 2017, and the e-mail to me from Mr. Charles Wilson, Senior News Producer for Home Box Office, Inc.'s *Last Week Tonight with John Oliver* television program, dated June 15, 2017 and enclosed as Exhibit A, containing various follow-up questions and materials in regard to a segment scheduled for June 18, 2017. In his correspondence, Mr. Wilson indicates that show will be about the coal industry and it is your client's intention to include material specific to Mr. Robert E. Murray and Murray Energy Corporation ("Murray Energy"). We, once again, insist that you cease and desist from any effort to defame, harass, or otherwise injure Mr. Murray or Murray Energy. Failure to do so will result in immediate litigation, as we have filed in the past, including our recent lawsuit against The New York Times, which contains some of the falsehoods that Home Box Office, Inc. intends to publish.

Indeed, Mr. Wilson's recent e-mail makes clear that you not only plan to regurgitate previously published malicious false statements, but you also intend to focus on topics of the most incendiary, demeaning nature. Broadcast of this material will severely harm the reputation of Mr. Murray and Murray Energy, which is obvious defamation and cast them in a false light before the public. Once again, in the interest of promulgating the truth, the following examines each topic in more detail.

Second Cease and Desist Letter

June 16, 2017

Page 2

## **I. Supposed Workforce Reductions in 2012**

As we said before, very few of the layoffs that were announced in 2012, thankfully, materialized. We had to give a WARN Act notice as a precaution in advance of some perceived coal market and mine geological conditions that could occur. They did not.

But, none of the employee layoffs had anything to do with Mr. Murray's writing following the recent election of Barack Obama. All layoffs contemplated were the result of coal market and mining condition problems. For you to try to, once again, connect Mr. Murray's writing to any employee layoff in our Companies would be libelous, as we are giving you the facts that we will prove.

## **II. The Accident at Crandall Canyon**

Again, joking about this accident is cruel and, no doubt, will cause emotional pain and suffering to many families and many of our employees, managers, and executives, including Mr. Murray. Miners lost their lives and others were injured by this horrible tragedy. The accident has had a lasting impact on many families, many of our employees, and our Company. Mr. Murray, himself, went into that Mine for twenty-eight (28) straight days to lead in the rescue effort, and the trauma for those involved and Mr. Murray has been very great.

Nevertheless, it is clear that you have sifted through certain Crandall Canyon related media statements to find what you believe to be some of the most incendiary and provocative material possible.

What you obviously fail to comprehend, from reading media reports a decade after this accident occurred, is how the tragedy played out over the course of a month in August, 2007, as well as the enormous pressure that had been placed on Mr. Murray, personally, to try and rescue the miners who had become trapped in the mountain and simultaneously deal with the families' needs. Again, Mr. Murray was at the Crandall Canyon Mine in Utah within four (4) hours of the accident occurring and spent the next twenty-eight (28) days on that mountain overseeing the massive rescue efforts, and administering to the families, that were being followed closely by almost every major news organization in America.

When he arrived at the Mine, the University of Utah broadcast that an earthquake had occurred with an epicenter of 4.7 miles from the Crandall Canyon Mine. As the major Joe's Valley Fault was nearby, this was the logical conclusion, which was eventually borne out by studies weeks after the incident. The University of Utah did try to withdraw their earlier statement, due to the criticism during the rescue effort. But, in the end, what they originally stated was confirmed.

Second Cease and Desist Letter

June 16, 2017

Page 3

Mr. Murray was unable to satisfy the expectations of the public and the family members of the trapped miners, but he and his team worked around the clock to try and rescue the miners, and daily he showed honesty, sincerity and compassion in his communications and dealings with the public and, particularly, the families. One would expect that the many hourly meetings with the families of the trapped miners always would have gone smoothly or would have been free of emotion. These meetings were as frequent as throughout every day, and we provided a plane for all of the trapped miners' families. Those were tense, painful times. Arm-chair quarterbacking and joking about such heartfelt, passionate issues, even years after the fact, is callous, disrespectful, and damaging. Everyone was trying their hardest to rescue the trapped miners. Over \$45 million and over four hundred (400) people were committed to the rescue, as "there is no price on a human life," Mr. Murray stated then, when he was asked about it.

More particularly, in response to Mr. Wilson's reference to Mr. Mike Marasco, son-in-law of Mr. Kerry Allred, a miner, the referenced statements occurred during "testimony" coordinated by the United Mine Workers of America ("UMWA") and the law firm that later represented the families in civil litigation. Crandall Canyon was not a union-represented mine. In the video, the attorneys are sitting directly behind Mr. Marasco. The statement he was reading had been prepared, at least in part, by his attorneys and the UMWA, and not by him.

Finally, in regard to publicly available studies indicating that the collapse was initiated by a seismic event originating near the Joe's Valley Fault Zone, see, for example:

- A. Kubacki, T., K. Koper, K.L. Pankow and M.K. McCarter (2014). Changes in mining induced seismicity before and after the 2007 Crandall Canyon Mine Collapse, *J. Geophys. Res.*, doi: 10.1002/2014JB011037.
  - a. "Lineations apparent in the newly detected events have strikes similar to those of known vertical joints in the mine region, which may have played a role in the collapse."
  - b. "At Crandall Canyon, however, there is a notable spatial gap in seismicity between the western event clusters and the seismicity to the east."
- B. From Appendix S to the MSHA Report, titled "Back-Analysis of the Crandall Canyon Mine Using the LaModel Program," Keith A. Heasley, Ph.D., P.E. West Virginia University:

Second Cease and Desist Letter

June 16, 2017

Page 4

- a. “This [particular] analysis indicates that a sudden change in stresses due to slip along a joint in the roof certainly could have been a factor in triggering the collapse seen on August 6<sup>th</sup>.” (at page 36)
    - i. The USGS defines an “earthquake” as “both sudden slip on a fault, and the resulting ground shaking and radiated seismic energy caused by the slip”
  - b. “From the modeling, it was not clear exactly what triggered the August collapse. . . . Likely candidates include: . . . a joint slip in the overburden. . . .” (at pages 43-44)
- C. From “Seismological Report on the 6 Aug 2007 Crandall Canyon Mine Collapse in Utah,” University of Utah Dept. of Geology and Geophysics (relied upon by MSHA):
- a. This report was relied on by the Federal Mine Safety and Health Administration, but they said it was not determinative.
  - b. In a discussion of the source mechanism, “the first motion data alone do not provide definitive results because normal-faulting mechanisms can also be fit to the data.” (at page 19)
  - c. Concluding that “most [but not all] of the seismic wave energy in this event was generated by the mine collapse and not by a naturally occurring earthquake.”
  - d. The University of Utah also relocated the epicenter of the initial seismic event to the western edge of the Mine, close to the Joe’s Valley Fault Zone.

Again, Mr. Murray only repeated what the University of Utah initially publicly broadcast about the seismic event and was, in the end, correct in his original assessment that an earthquake caused the mine collapse. It was proven that the triggering event of the Crandall Canyon Mine preceded the collapse by approximately two (2) seconds and occurred in the Joe’s Valley Fault Zone.

We are competent mining engineers, as is Mr. Murray, and we knew all along that the small amount of mining in a small area by one (1) continuous mining unit, could not cause the huge collapse of the entire mountain over the Crandall Canyon Mine. It had to be related to the huge faults in the earth at the location, and has so been proven.

Second Cease and Desist Letter

June 16, 2017

Page 5

### **III. Complaints of Messrs. Harrison and Stolzenfels**

Your mine safety data is incorrect and mischaracterized. When comparing these figures, you must note that a particular mine's incident rate depends on the reporting standards of that mine. There is often little consistency in the reporting from company-to-company. Murray Energy properly teaches its miners to report *every* injury, regardless of how insignificant they may be, which we believe makes our rate appear higher than at comparable mines owned and operated by others.

Also, you should be aware that the comparison to the national averages does not take into consideration the severity of the injuries (virtually all of ours are very minor), the different types of mines, or the regional differences in geology and mining conditions. In other words, the comparisons and conclusions that you appear to intend to make likely are false and misleading. You cannot take the data that you cite and make any conclusion relative to the safety of the miners, unless you are an expert, and Home Box Office, Inc. is not. Nearly all of the "injuries" shown were very minor (pinched fingers, etc.), but our Companies report them all.

When comparing actual lost time injuries, on a per ton basis, for similarly situated underground coal mines, Murray Energy operates amongst the safest coal mines in the Country. For you to report otherwise would be false and damaging.

### **IV. Defamation is Not Protected by First Amendment**

In response to your letter, you should note that the First Amendment does not give reporters the right to say anything, anywhere, to anyone, and that there is no constitutional value in false statements of fact. *Gertz v. Robert Welch Inc.*, 418 U.S. 323, 340 (1974). "Neither the intentional lie nor the careless error materially advances society's interest in 'uninhibited, robust, and wide-open' debate on public issues." *Gertz v. Robert Welch Inc.*, 418 U.S. 323, 340 (1974) (quoting *N.Y. Times Co. v. Sullivan*, 376 U.S. at 270).

Murray Energy has aggressively protected its reputation in the past against various false and malicious statements and will continue to do so. False statements are particularly valueless and cause real damage to an individual's or company's reputation that cannot easily be repaired. Courts have noted that, "Society has a pervasive and strong interest in preventing and redressing attacks upon reputation." *Mehta v. Ohio Univ.*, 194 Ohio App. 3d 844, 856 (Franklin Cnty. 2011). Even among public figures, defamation — that tort "[w]hose sting is sharper than the sword's" (Shakespeare, *The Winter's Tale*, act 2, sc. 3.) — can leave scars that demand redress. Your client will be responsible for its abuse of the right.

Your clients have dredged up every possible negative story to place Mr. Robert E. Murray and Murray Energy Corporation in a false light. You are basing your

Second Cease and Desist Letter

June 16, 2017

Page 6

program on anything negative that you can find. We have no idea what the false, decades old “squirrel” story of the United Mine Workers was about. It never occurred.

Mr. Murray is extremely respected for his commitment to coal miner safety. He has pioneered Emergency Response and Fire Suppression Training in the coal industry, over many decades. He has provided employment to as many as 8,400 coal mining families at one time and has fought for the retiree medical and pension benefits for coal miners that never worked in his Company. He is a very charitable man who has generously benefitted our miners, miner families, and our communities. He believes that his Lord, Jesus Christ, built Murray Energy's Mines and has kept them so very safe.

We will not sit idly by when attacked with false lies that seek to incite, smear, and cause damage to the reputation of Mr. Murray or Murray Energy. Mr. Murray is seventy-seven (77) years old and depends on a generated oxygen supply to live. But, he still works seven (7) days per week for his employees and Company. Home Box Office will make a huge mistake in your attempt to destroy his lifelong reputation.

As you know, Murray Energy just sued The New York Times for citing some of the same false former media reports as Home Box Office, Inc. intends to regurgitate in your program. Ask Knight Ridder or the Akron Beacon Journal what happened from their false statements about Murray Energy.

It is apparent that you intend to damage Mr. Murray by reciting any negative aspect that can you can dredge up. Home Box Office, Inc. is in for the fight of its existence, if you do so.

Please advise as to what course of action your client will take.

Sincerely,

MURRAY ENERGY CORPORATION

Gary M. Broadbent  
Senior Corporate Counsel and  
Director of Investor and Media Relations

**Exhibit A**

***June 15, 2017 Email From Mr. Charles Wilson***

**From:** Charles Wilson [REDACTED]  
**Sent:** Thursday, June 15, 2017 7:14 PM  
**To:** Broadbent, Gary [REDACTED]  
**Subject:** Murray Energy/"Last Week Tonight" follow-up

Mr. Broadbent,

I have reviewed your June 12<sup>th</sup> letter, and our show's legal counsel has responded separately to it.

I reiterate our attorney's letter's assertion that I welcome any continuing communication with an appropriate person who will be directly responsive to my queries, either on the record or just on background.

I have included below some brief follow-ups to the material included in your letter, as well as a small amount of additional material for review by the appropriate person at Murray Energy—all of which is material being considered for possible inclusion in the episode.

If someone could get back to me by late tomorrow (**Friday, June 16<sup>th</sup>**), I'd be most grateful.

Sincerely,

Charles Wilson

[Charles Wilson](#)  
Senior News Producer  
Last Week Tonight with John Oliver  
[REDACTED]  
(212) [REDACTED]

**\*November 2012 workforce reductions**

\*Your letter notes that many of the 156 layoffs announced the day after the federal election in 2012 "did not materialize," but you do not specify how many. If you could provide information on which layoffs did not materialize of those reported 156, I would be grateful.

**\*Crandall Canyon**



\*Your letter refers to recent studies indicating that the collapse was caused by a seismic event originating in Joe's Valley Fault Zone. Could you please send us those studies or provide citations for them?

\*We wondered if Mr. Murray disputed—or wanted to provide additional context for—any of the account on p. 106 from the Independent Review of MSHA's Actions at Crandall Canyon mine:

<https://arlweb.msha.gov/ccreview/CrandallCanyonIndependentReview.pdf>

\*We wondered if Murray Energy disputed the characterization of Mike Marasco, son-in-law of miner Kerry Allred, in this Congressional testimony: (20 minutes, 33 seconds): "The manner in which Murray and MSHA dealt with us for the first 2 weeks after the collapse was unbelievable. They just told us what we wanted to hear and not the facts. All we heard was earthquake, earthquake. We did not want to hear about earthquakes but wanted to know when we were going to see our loved ones again. Murray more than once yelled at us when we asked questions."

<https://www.youtube.com/watch?v=xpaUwG3NMD4>

#### **\*Stolzenfels and Harrison cases**

\*You say in your letter that Murray Energy Corporation "prides itself on running the safest coal mines in the country." MSHA data provided to us in our reporting indicated that the injury incident rate at the Marion County mine that was the center of this dispute—from the second quarter of 2016 through the first quarter of 2017—was 9.19 (compared to the national average of 3.26). And that 189 injuries had been reported in eight Murray mines from the second quarter of 2016 to first quarter of 2017:

Marion county mine: 9.19 the incident rate, 46 injuries

Powhatan #6: 7.88 incident rate, 17 injuries

Monongalia County: 7.67 incident rate, 26 injuries

Marshall County: 6.25 incident rate, 53 injuries

Marshall County River load out: 4.03 injury rate, 1 injury

Harrison County: 3.64 injury rate, 17 injuries

Ohio County: 3.2 injury rate, 17 injuries

Century mine: 3.20 injury rate, 12 injuries

\*Does Murray Energy dispute the accuracy of this data?

\*Does this data contradict Murray's assertion that it runs the "safest coal mines in the country"?

#### **\*Columbia Journalism Review's representation of Murray's defamation lawsuits:**

\*We wanted to make sure that the *Columbia Journalism Review* had represented your response fairly in an article about past defamation suits. Namely, that the company maintains "very good working relationships" with many news outlets, and that defamation suits are only "a last resort" and that the company has "never used defamation lawsuits to chill free speech."

\*We wanted to make sure that the individual defamation suits are properly referenced/contextualized in The Columbia Journalism Review's article. Does Murray Energy dispute the Columbia Journalism Review's reporting on any of the following defamation lawsuits?

\*Columbia Journalism Review article:

[http://archives.cjr.org/united\\_states\\_project/murray\\_energy\\_defamation\\_lawsuits\\_huffington\\_post.php](http://archives.cjr.org/united_states_project/murray_energy_defamation_lawsuits_huffington_post.php)

\*Murray Energy has sued a contributor to the Huffington Post.

\*Murray Energy threatened to sue an editor of *Coal Age* over an editorial that had claimed that the coal industry “takes the ostrich approach when Bob Murray takes the microphone, hoping that he will go away soon and no one will notice.”

\*Murray Energy sued over four statements in an *Akron Beacon Journal* article. [*Separately, does Murray Energy consider the following quote about this lawsuit accurate? “McKown noted that Murray’s suit does not actually demand \$1 billion in damages (which it could not do legally), but does contend that this figure reflects the potential economic losses the plaintiffs feel could be caused by the story.”*

[https://www.athensnews.com/news/local/coal-operator-sues-beacon-journal-over-portrayal-of-him-in/article\\_24549e9b-de35-5b4c-b3c6-2ad29b33f694.html](https://www.athensnews.com/news/local/coal-operator-sues-beacon-journal-over-portrayal-of-him-in/article_24549e9b-de35-5b4c-b3c6-2ad29b33f694.html).]

\*Murray Energy sued a team of journalists at Ohio’s *Chagrin Valley Times* for a piece that suggested “... he manages through ‘intimidation,’ that his employees ‘have no voice,’ and that he’s a ‘bully.’”

**\*Dispute with UMWA over “squirrel” story:**

\*A 2001 “UMWA Journal” article had included this anecdote: “Ask most of the miners working at the Maple Creek or Powhatan No. 6 mines to tell you owner/operator Robert Murray’s squirrel story and you’re in for a treat. The way Murray tells it, he had just been let go in 1987 as CEO of North American Coal Company and was feeling extremely down about the whole situation. At home one day, Murray was sitting on his back porch, contemplating his future, when he was approached by a squirrel. Murray says the squirrel hopped up next to him, looked him square in the eye and said “Bob Murray, you should be operating your very own mines.”

<https://web.archive.org/web/20011201092250/http://umwa.org/journal/VOL112NO4/july1.shtml>

\*I hadn’t seen a direct response from Murray Energy on this anecdote, but the *Salt Lake Tribune Journal* had reported this in November of 2007: “Later, he studied mining engineering on a scholarship and worked his way up in the coal industry, rising to CEO at North American Coal before he was dismissed in 1987. That’s when, according to the union’s Journal, Murray had a conversation with a squirrel who advised him to buy his first coal mine. **This part of his lore makes officials at Murray Energy curse the union for spreading false rumors.** Nonetheless, the tale lives on among saloon patrons in mining towns. Although Bob Murray is not easily defined, it’s clear that he has strong opinions and is not easily swayed.”

\*I just wanted to make sure that this article expressed Murray Energy’s position on this anecdote—that the story regarding the squirrel was a “false rumor” spread by the union.

---

That is all. I appreciate your time.